

218753

BEFORE THE SURFACE TRANSPORTATION BOARD

Yakima Interurban Lines Association,)
-- Abandonment Exemption -- in) AB 600 (sub-no 1-X)
-- Yakima County, WA)

**PETITION TO REOPEN ABANDONMENT OF
NACHES RAIL LINE**

JURISDICTION

Pursuant to 49 CFR § 1117.1 and Board decision (AB 600 34751 EB), dated November 18, 2004, Kershaw Sunnyside Ranches, Inc., petitions the Surface Transportation Board to reopen Kershaw Sunnyside Ranches, Inc.'s (Kershaw Sunnyside Ranches) Adverse Abandonment Application for the Naches Rail Line.

STATEMENT OF CLAIM

On or about December 11, 2003, Kershaw Sunnyside Ranches filed an adverse abandonment application. (AB 600, 209589). The Naches Line is owned by the Yakima Interurban Lines Association (YILA). YILA, Yakima County and various other governmental entities opposed the Application. They claimed they had a plan to rehabilitate the line or to rail bank. In the Board's order on the Application, dated November 19, 2004, the Surface Transportation Board ruled:

We conclude that the public is best served by denying the adverse abandonment application. Given the evidence before us, we cannot find that the prospect for continued rail service, or the need for that service is as negligible as Kershaw would have us find, and we cannot find that the relief Kershaw seeks outweighs the public interest in rail service on this line. **We note that our finding is without prejudice to Kershaw's**

seeking to reopen or file a new abandonment application, should the proposed rehabilitation and restoration not occur within a reasonable period of time.

(AB 600 34751 EB) (emphasis added).

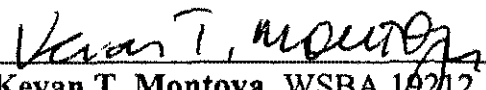
YILA filed a Notice of Exemption to rail bank the line on December 30, 2005. The Notice indicated that YILA intended to abandon the Naches Line between Milepost 2.97 and Milepost 14.26 (AB 600, 215462, Application p.3). On January 12, 2006, the Secretary of the Surface Transportation Board filed a decision that indicated that "YILA shall file a Notice of Consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by YILA's filing of a Notice of Consummation by January 19, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire." (AB 600 36616 DO, p. 4). YILA has not filed any Notice of Consummation. On August 24, 2006, Yakima Interurban Lines Association (YILA) and the governmental entities that are assisting it in the rail banking filed a Motion for Extension of NITU. (AB 600 217359). On September 20, 2006, the STB granted the county's request for extension of the NITU to March 31, 2007. (AB 600 37305 DO). YILA has filed another request for a 180 day extension of NITU. (AB 600 218703). Kershaw Sunnyside Ranches has plans to expand its operations. The delay and rail banking will interfere with its plans to expand. (Declaration of Bob Kershaw, dated March 1, 2007).

DEMAND FOR RELIEF

Based on the STB's earlier orders, *Fritsch v. Interstate Commerce Commission*, 59 F.3d 248 (D.C. Cir 1995) *rehearing en banc denied, cert. denied*, 516 U.S. 1171 (1996), and CFR 49 § 1117.1 Kershaw Sunnyside Ranches respectfully requests that the Surface Transportation Board reopen Kershaw Sunnyside Ranches' original Adverse Abandonment Application and order that the Naches rail line be abandoned from Milepost 2.97, at Fruitvale Road, Washington, to Milepost 14.26 at Naches, Washington.

Dated this 2nd day of March, 2007.

VELIKANJE, MOORE & SHORE, P.S.
Attorneys for Kershaw Sunnyside Ranches, Inc.


Kevan T. Montoya, WSBA 19212

CERTIFICATE OF SERVICE

By my signature below, I certify service on March 2, 2007, by U.S. Mail, postage pre-paid first class, a copy of the foregoing upon the following counsel of record:

Charles Montange
Attorney at Law
426 NW 162nd Street
Seattle, WA 98177

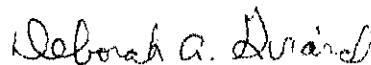
Erik G. Light
Office of the General Counsel
Surface Transportation Board
395 E Street, SW, Suite 1260
Washington, DC 20423-0001

Paul Edmondson, Esq. (YILA)
313 North Third Street
Yakima, WA 98901

Raymond L. Paolella
City Attorney
City of Yakima
200 South Third St.
Yakima, WA 98901-2830

Lawrence E. Martin, Esq.
Halverson & Applegate, P.S.
1433 Lakeside Court, Suite 100
Yakima, WA 98907-2715

Terry Austin, Esq.
Chief Civil Deputy Pros. Atty.
Yakima County Courthouse
128 North 2nd Street, Room 211
Yakima, WA 98901



Deborah A. Girard

G:\KTM\Kershaw\Surface Transportation Board\Pleadings\Petition to Reopen Abandonment Application 03-02-07.doc